NATIONAL CANNERS ASSOCIATION

INFORMATION LETTER

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STATUS OF PEA LABELING CASE

In view of numerous inquiries regarding the status of the pending court actions seeking a permanent injunction to restrain the Secretary of Agriculture from enforcing the regulation promulgated under the McNary-Mapes amendment to the Food and Drugs Act as to the labeling of soaked dry peas, the Association directed an inquiry to the Food and Drug Administration. In this letter the Association stated:

The Association is receiving repeated inquiries with respect to the enforcement of the regulation promulgated under the McNary-Mapes amendment to the Food and Drugs Act which requires that canned peas prepared from mature, soaked dry peas shall bear the legend "Below U. S. Standard—Low Quality but Not Illegal," and in addition the special statement "Soaked Dry Peas."

You, and others connected with the enforcement of the food laws, are familiar with the fact that the National Canners Association, practically since its organization, has favored and urged a system of labeling canned dry peas that would be really informative to the consumer. It was to bring about a practical and enforceable requirement for such labeling that the industry, under the leadership of the Association, earnestly advocated and worked for the passage of the McNary-Mapes amendment, because it was felt that this amendment would give the Secretary of Agriculture broad powers, enforceable in the courts, to protect the consumer.

With the Secretary of Agriculture now enjoined from enforcing the regulation promulgated with reference to the labeling of canned dry peas, pea canners are much concerned. There is an increasing production of canned dry peas labeled in such a way as practically to defeat the purpose for which the McNary-Mapes amendment was adopted. Packers of high quality peas are fearful that what they call the failure of the McNary-Mapes labeling requirement is bound to have an adverse effect on the quality of the peas packed during the coming season.

I would greatly appreciate a letter from you giving the present status of the cases in court, and, if practicable, some idea of the possibility of an early decision in the cases now pending, because there is but a short time now before another pea canning season will open.

The following reply has been received from Mr. W. G. Campbell, Chief of the Food and Drug Administration:

I have your letter of March 13 inquiring as to the present status of pending court cases involving the application of the requirements of the McNary-Mapes amendment to soaked dry peas.

As you are aware, numerous seizures were directed against the product put out by the Morgan Packing Company, which failed to bear the sub-standard legend. None of these pending seizure actions have been tried for the reason that the packer instituted injunction proceedings against the United States Attorney for the Southern District of Indiana and in the District of Columbia against the Secretary of Agriculture and his subordinates, seeking to restrain further proceedings against this article. We have just been advised that the court for the Southern District of Indiana will, on March 18 or shortly thereafter, render a decision. I will advise you as promptly as possible as to its purport. If it is adverse to the government, steps will be taken for its review.

The temporary injunction issued in the District of Columbia is still pending. A date for final hearing on the merits of this case has not been set. We anticipate a reasonably early hearing. Should the temporary injunction be dismissed the Department will, of course, be free to proceed except in the Southern District of Indiana in the event the decision there is against the government. Should a permanent injunction be granted, however, it will be the purpose of the Department to prosecute an appeal.

During the pendency of these actions the Department is, of course, estopped from proceeding against soaked dry peas packed by the Morgan Packing Company.

SUPREME COURT DECISION IN ANTI-TRUST ACT CASE

March 13, 1933, the Supreme Court of the United States rendered a decision in the case of *Appalachian Coals, Incorporated,* v. *The United States,* making a further interpretation of the Sherman Anti-Trust Act, particularly as to the legality of a selling agency involved in that case. Covington, Burling & Rublee, counsel for the National Canners Association, have prepared the following summary of the decision.

The suit was brought to enjoin a combination of 137 producers of bituminous coal in the Appalachian territory. These producers mined approximately 12 per cent of the production east of the Mississippi and 64 per cent of the production of the Appalachian territory and immediately surrounding area. They had created an exclusive selling agency. The Government contended that this violated the Sherman Anti-Trust Act in that it eliminated competition among the producers and also gave the selling agency power substantially to affect and control the price of bituminous coal in many interstate markets.

The plan had not gone into operation when the suit was brought and the district court issued an injunction. This was reversed by the Supreme Court of the United States.

The Supreme Court found that the coal industry was in distress, that it had suffered from over-expansion and from a serious relative decline from the growing use of substitute fuels, and that there were injurious practices within the industry

itself which demanded correction, and that the defendants were engaged in a fair and open endeavor to aid the industry in a measurable recovery from its plight. The court found that it was "impossible to conclude that defendants through the operation of their plan would be able to fix the price of coal in the consuming markets, that the defendants' coal would continue to be subject to active competition, that in addition to the coal actually produced and seeking markets in competition with the defendants' coal enormous additional quantities will be within reach and can readily be turned into channels of trade if an advance of price invites that course and that the selling agency will also be compelled to cope with organized buying power of large consumers." The court found that "the plan cannot be said either to contemplate or to involve the fixing of market prices." In regard to this the court said:

> "The contention is and the court below found that while defendants could not fix market prices, the concerted action would 'affect' them, that is, it would have a tendency to stabilize market prices and to raise them to a higher level than would otherwise obtain. But the facts found do not establish, and the evidence fails to show, that any effect will be produced which in the circumstances of this industry will be detrimental to fair competition. A cooperative enterprise, otherwise free from objection, which carries with it no monopolistic menace, is not to be condemned as an undue restraint merely because it may effect a change in market conditions, where the change would be in mitigation of recognized evils and would not impair, but rather foster, fair competitive opportunities. * * * The fact that the correction of abuses may tend to stabilize a business, or to produce fairer price levels, does not mean that the abuses should go uncorrected or that cooperative endeavor to correct them necessarily constitutes an unreasonable restraint of trade. * * * Putting an end to injurious practices, and the consequent improvement of the competitive position of a group of producers * * * may be entirely consonant with the public interest, where the group must still meet effective competition in a fair market and neither seeks nor is able to effect a domination of prices.
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> * * * there is no ground for holding defendants' plan illegal merely because they have not integrated their properties and have chosen to maintain their independent plants, seeking not to limit but rather to facilitate production. * * * The mere number and extent of the production of those engaged in a cooperative endeavor to remedy evils which may exist in an industry, and to improve competitive conditions, should not be regarded as producing illegality. * * * The Anti-Trust Act aims at substance. Nothing in theory or experience indicates that the selection of a common selling agency to represent a number of producers should be deemed to be more abnormal than the formation of a huge cor-

> poration bringing various independent units into one ownership. Either may be prompted by business exigencies and the statute gives to neither a special privilege. The question in either case is whether there is an unreasonable restraint of trade or an attempt to monopolize. If there is, the combination cannot escape because it has chosen corporate form, and, if there is not, it is not to be condemned because of the absence of corporate integration. As we stated at the outset, the question under the Act is not simply whether the parties have restrained competition between themselves but as to the nature and effect of that restraint."

In conclusion the Supreme Court pointed out that the trial in the district court had been in advance of putting the plan into actual operation. The Court stated:

> "If in actual operation it should prove to be an undue restraint upon interstate commerce, if it should appear that the plan is used to the impairment of fair competitive opportunties, the decision upon the present record should not preclude the Government from seeking the remedy which would be suited to such a state of facts."

The decree of the district court was therefore reversed and the case remanded with instructions to enter a decree dismissing the bill of complaint without prejudice, and in order that the voluminous evidence might be preserved for any future hearing it was provided that the court should retain jurisdiction of the case and might set aside the decree and take further proceedings if future developments justified that course in the appropriate enforcement of the Anti-Trust Act.

The opinion of the court was delivered by Mr. Chief Justice Hughes. The summary that is here given is necessarily a brief one. Anticipating that many of the members will be interested in reading the entire decision, the Association has arranged to furnish copies upon application by members.

CANNERS URGED TO REPORT INTENDED ACREAGE

Schedules have been sent this week to canners of corn and wax and green beans asking them to report their intended acreage for this year's pack. It is of primary importance to these branches of the industry to have available before their final plans are completed information as to the tentative plans of the entire industry, so that such modifications may be made as will enable the corn and bean canners better to adjust their output to the probable market requirements.

The more complete the information received by the Division of Crop and Livestock Estimates from the individual canners, the more accurate will be its statement on intended acreage, which will be issued early in April. All canners are urged to cooperate with the Division by prompt return of the schedules.

HEARINGS ON FOOD STANDARDS

The Food Standards of the U. S. Department of Agriculture has announced hearings in Washington on the definitions for various food products as follows: April 4, alimentary pastes; April 5, lemon oil; April 6, apple butter; April 7, dried fruits, including dried apricots, peaches and prunes.

Those unable to attend may present their views in writing to the chairman of the Food Standards Committee, Federal Food and Drug Administration, Washington.

REPORT ON STATUS OF PEA APHID PROBLEM

The Bureau of Entomology of the U. S. Department of Agriculture issued late in December a mimeographed report on the status of the pea aphid problem in Wisconsin, copies of which were sent to pea canners. If this report has not already been received by any pea canner who is interested in the information it presents, he can obtain a copy by addressing a request to the Bureau of Entomology in Washington.

TRUCK CROP PROSPECTS

Following are excerpts from reports of the U. S. Division of Crop and Livestock Estimates:

ASPARAGUS.—A production of 46,000 crates is forecast for the two early southern states, Georgia and South Carolina. Although the acreage reported for cutting this year is the same as last year in South Carolina and considerably smaller in Georgia, yields are expected to be much higher than those of 1932, indicating an increase in production of 23 per cent in Georgia and 33 per cent in South Carolina. The amount of asparagus that may be expected from California this year is very uncertain. The acreage is 8 per cent larger than a year ago but yields will depend upon the degree to which cutting and packing operations are controlled again this year.

BEETS.—The preliminary estimate of acreage for the second early group of states (Louisiana, Mississippi, South Carolina) is 5 per cent below last year's acreage and 42 per cent below the 5-year average acreage, 1927-1931. About one-fourth of the planted acreage in Texas was destroyed by the freeze in early February and the remaining acreage is estimated to be 7 per cent smaller than last year's acreage. The production is expected to be 13 per cent smaller than the 1932 production.

CARROTS.—The acreage estimated for the second early group of states (California, Louisiana, Mississippi) is 8 per cent less than that of 1932. It is 3 per cent greater than the average acreage for the five-year period, 1927 to 1931. The freeze in February destroyed almost one-third of the acreage in Texas. The planted acreage was about double that of last year so the acreage remaining for harvest in Texas still represents a material increase, 37 per cent. Production in Texas is now expected to be slightly larger than the 1932 production.

CAULIFLOWER.—There are 1,668,000 crates forecast for the spring crop

in California, a decrease of 17 per cent below the 1932 spring-crop production. This expected reduction is due to both a smaller acreage and lower indicated yield per acre than the acreage and yield of one year.

GREEN PEAS.—There are 558,000 bushels of peas forecast for the early group of states (Arizona, Imperial Valley, Texas). This is an indicated increase of 11 per cent over the production of 503,000 bushels in 1932. The reported acreage is 27 per cent greater than last year's acreage but yields are expected to be lower than those of last year in all states except Florida, with a decrease of 12 per cent in the indicated average for the group.

GREEN PEPPERS.—The spring pepper acreage in Florida is estimated at 2,600 acres as compared with 2,700 acres last spring. This brings the total acreage for Florida (fall and winter and spring crops), up to 7,500 acres, which is 7 per cent less acreage than in 1932. It is, however, more than one-fourth greater than the five-year average acreage, 1927 to 1931. The production forecast for the winter crop is 29 per cent smaller than that of one year ago, or 700,000 bushels compared with 980,000 bushels in 1932.

STRAWBERRIES.—The production forecast for the early group of states (Alabama, Florida, Louisiana, Mississippi, Texas) is 10 per cent larger than last year's production and 26 per cent larger than the 5-year average production for the years 1927 to 1931. Yields in Alabama, Louisiana and Mississippi are expected to be higher, and those in Florida and Texas lower, than the 1932 yields.

FROZEN AND PRESERVED FRUITS IN COLD STORAGE

The following table shows the holdings of fruit in cold storage reported to the Bureau of Agricultural Economics as of March 1, also a comparison with last year and with a five-year average:

	March 1, 1933	March 1, 1932	Five-year average
Apples:			
Barrels	618,000	762,000	823,000
Boxes	7,168,000	8,789,000	8,492,000
Baskets	5,237,000	5,182,000	2,910,000
Pears:			
Boxes	454,000	423,000	511,000
Baskets	24,000	60,000	26,000
Frozen and preserved fruits (pounds)	62,941,000	82,283,000	57,579,000

GREEN AND WAX BEAN PACK IN 1932

The 1932 pack of green beans, according to figures collected by the Foodstuffs Division of the Bureau of Foreign and Domestic Commerce, amounted to 3,435,447 cases on the basis of 24 No. 2 cans, as compared with 4,871,271 cases in 1931, a decrease of 29.5 per cent.

The 1932 pack of wax beans, on the basis of 24 No. 2 cans, amounted to 588,097 cases as compared with 1,195,820 cases in 1931, a decrease of 50.8 per cent.

Of the 1932 figures, 95 per cent was based on pack figures reported by the individual canners. The remaining 5 per cent was based on estimates from sources believed to be reliable.

PACK BY STATES

State	Pack basis 24 No. 2 cans		Pack basis cases all sizes	
GREEN BEANS	1931	1932	1931	1932
	Cases	*Cases*	*Cases*	*Cases*
Arkansas	103,462	97,119	97,789	91,879
Delaware	134,646	74,924	125,764	72,170
Louisiana	46,261	44,038	41,548	42,104
Maryland	1,049,803	802,075	997,762	771,131
Michigan	357,652	306,918	345,384	298,579
Missouri	40,633	18,820	38,860	18,489
New York	821,110	588,090	794,256	563,167
Ohio	15,654	9,892	15,555	9,716
Pennsylvania	416,870	135,483	404,246	131,735
Utah	34,897	68,460	34,367	67,595
Virginia	76,412	18,114	65,742	15,156
Wisconsin	490,426	350,308	472,605	336,684
All other states	1,283,445	921,206	1,181,408	865,707
Total	4,871,271	3,435,447	4,615,286	3,284,112
WAX BEANS				
Maine	100,454	79,908	94,699	78,045
Michigan	186,502	112,596	178,074	108,007
New York	322,561	145,524	318,840	161,200
Wisconsin	344,578	137,218	334,906	134,379
All other states	241,725	112,851	235,333	110,858
Total	1,195,820	588,097	1,161,852	592,489

PACK BY SIZES OF CONTAINERS

Size	Green beans		Wax beans	
	1931	1932	1931	1932
	Cases	*Cases*	*Cases*	*Cases*
No. 1, 48 to case	80,388	30,923	49,728	17,652
No. 2, 24 to case	3,684,297	2,795,234	947,393	496,711
No. 2½, 24 to case	109,737	35,574	.....	.....
No. 10, 6 to case	645,042	400,760	116,756	42,948
Other sizes	95,822	21,621	47,975	35,178
Total	4,615,286	3,284,112	1,161,852	592,489

CANNED SHRIMP STOCKS AND SALES

Stocks of canned shrimp, as reported by all but two firms to the Shrimp Section of the National Canners Association, amounted to 140,119 cases on February 1. During the month of February there were packed 42,971 cases, and sales for the same period were 85,263 cases, leaving stocks on hand March 1 amounting to 97,827 cases.

ALASKAN CANNERY LOCATION BILL REINTRODUCED

Representative Welch of California has introduced in the House a bill (H. R. 150) to provide for the protection of fish by requiring reports on the location of canneries in Alaska and prohibiting certain salmon unlawfully caught from being imported into the United States. This bill is almost identical with the measure introduced by Mr. Welch and pending at the time of adjournment of the 72nd Congress.

NORWEGIAN SARDINE PACK IN 1932

The total pack of brisling sardines in the Stavanger district of Norway in 1932 was about 500,000 cases, which is somewhat above the normal output. Musse sardines were also produced in comparatively large quantities. Stocks on hand are reported small, and prices have a rising tendency.

GERMANS MAKING TOMATO JUICE

A German imitation of American tomato juice has appeared on the Reich market at prices considerably below quotations American exporters are in position to offer, according to the American vice consul at Hamburg. The German juice is quoted wholesale at 9½ cents for a container holding 6.9 fluid ounces.

AUSTRALIAN CANNED FRUIT EXPORTS

Exports of canned apricots, peaches and pears from Australia in 1932 totaled 645,620 cases of 24 30-ounce cans, as compared with 809,705 cases in 1931. Of the 1932 shipments, 554,207 cases went to Great Britain, as compared with 563,668 cases in 1931. Exports to Canada dropped from 143,028 cases in 1931 to 23,514 cases in 1932.

The Australian Fruit Industry Sugar Concession Committee has decided to allot a maximum of 20,000 pounds from its funds to assist exports of pineapple from the 1933 summer and winter packs, this sum to be expended in covering the manufacturers against loss on processing and exporting. Assistance is based on the manufacturers paying the pineapple growers 4 shillings a case at the growers' sending stations.

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